IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7052 OF 2005

Vijay Vishwanath Bhakare & Ors. ..Petitioners.

Vs.

Ganapati Sadashiv Patil & Ors. ..Respondents.

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Mr. A.M. Kulkarni for the Petitioners.

Mr. R.V. More for Respondent No.1.

Mr. P.P. Kakade, AGP for Respondent Nos.2 to 5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

13th April, 2006.

P.C.:

1. Rule, returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent taken up for hearing and final disposal.

2. The Petitioners filed an election petition questioning the election of the First Respondent as Sarpanch of the Budhgaon Grampanchayat in the Taluka of Miraj, in the District of Sangli. In support of the Election petition, an affidavit in lieu of the examination -in- chief was filed before the Collector. The Election

petition was inadvertently styled as a Petition under Section 15 of the Bombay Village Panchayat Act, 1958. A written statement was filed on behalf of the First Respondent. A purshis was filed on behalf of the Petitioners on 9th May, 2005 stating that the Election Petition was under section 33(5) of the Bombay Village Panchayat Act, 1958 and that the reference to Section 15 was a typographical error and should be permitted to be corrected. At that stage, the First Respondent moved an application questioning the maintainability of the petition and the application was allowed by the Collector. The Election Petition was consequently dismissed. An appeal was thereupon filed before the Divisional Commissioner. The Divisional Commissioner noted that it was improper for the Collector to have dismissed the Election Petition itself merely because of a reference to a wrong provision of law, particularly since the proceedings were being heard on merits. Having said that the Divisional Commissioner proceeded to entertain the Election Petition on merits and dismissed the Petition by the order impugned in these proceedings.

3. On behalf of the Petitioners it has been submitted that the allegations in the Election Petition, particularly in paragraphs

5.7 and 5.8. are that the First Respondent had abducted the First and Second Petitioners on the date of the election and it was as a result of this unlawful act that those Petitioners were unable to remain present at the election and to exercise their electoral right. Hence, it was submitted before this Court that there was a material irregularity in the conduct of the election and that the election of the First Respondent was liable to be set aside. The submission which has been urged is that evidence was being adduced before the Collector and that the examination -in- chief came to be recorded before the Collector. It was at that stage that an application was filed on behalf of the First Respondent for the dismissal of the Petition after the Petitioners filed a purshis for correcting a wrong reference to the provisions of law in the Election petition. Section 15 of the Bombay Village Panchayat Act deals with the determination of a dispute in regard to the validity of an election of the member of a Grampanchayat. Section 33(5), on the other hand, deals with a dispute relating to the validity of the election of a Sarpanch or Upasarpanch. The Divisional Commissioner held that it was not proper for the Collector to dismiss the Election Petition since the petition was referable to the provisions of Section 33(5). It was submitted that the matter should have been remanded back

to the Collector to complete the recording of evidence and for the disposal of the election petition on merits.

4. There is merit in the contention urged on behalf of the Petitioners that having held the dismissal of the petition to be improper, the Divisional Commissioner ought to have remanded the proceedings back to the Collector for trial of the Election Petition. The Election Petition contains serious allegations to the effect that the First and Second Petitioners were unlawfully abducted on the date of the election by the First Respondent and that the outcome of the election to the office of the Sarpanch was materially affected as a result. At this stage, it is neither appropriate nor necessary for this Court to entertain any view in regard to the merits of the allegations. It is sufficient to note that the merits would warrant consideration by the Collector before whom an Election Petition lies in the first instance. The Divisional Commissioner plainly erred in going into the merits of the case. The recording of evidence by the Collector was incomplete. The Collector is the authority entrusted by the Act to decide the validity of the election to the post of Sarpanch or Upasarpanch in the first instance.

5. Hence, it would be appropriate and proper if the impugned order of the Divisional Commissioner by which the Election Petition came to be dismissed on merits is quashed and set aside. The order of the Collector dismissing the Election Petition shall also stand quashed and set aside and the Election Petition shall stand restored to the file of the Collector. The Collector shall dispose of the Election Petition in accordance with law. All the rights and contentions of the parties are kept open to be urged before the competent authority.

6. On behalf of the First Respondent it has been stated that the First Respondent will move an application before the Collector for taking an additional written statement on the record to deal with the merits of the allegations contained in the Election Petition. The First Respondent will be at liberty to move an application which, it is needless to add, will be dealt with according to law.

7. The petition is allowed in the aforesaid terms. There shall be no order as to costs.